

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

**Mailed:
March 4, 2004**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rugged Footwear Company

Serial No. 78008156

John L. Welch for Rugged Footwear Company.

Maria-Victoria Suarez, Trademark Examining Attorney, Law
Office 102 (Thomas V. Shaw, Managing Attorney).

Before Seeherman, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Rugged Footwear Company (applicant) seeks to register
in typed drawing form IF BY LAND IF BY SEA for
"computerized on-line retail services in the field of
footwear and clothing." The intent-to-use application was
filed on May 15, 2000.

The application was published on June 5, 2001, and a
Notice of Allowance was mailed on August 28, 2001. On
September 24, 2001, applicant submitted a Statement of Use
with a specimen of the mark being used in connection with
the services.

A copy of this specimen is reproduced below.

Thereafter, the Examining Attorney refused registration on the basis "that the drawing of the mark is not a substantially exact representation of the mark as used in connection with the services." (Examining Attorney's brief page 1). When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

Trademark Rule 2.51(a)(2) provides that "the drawing of the trademark [or service mark] shall be a substantially exact representation of the mark as intended to be used on or in connection with the goods [or services] specified in the application." Put quite simply, we find that the Examining Attorney's argument is well taken in that applicant's drawing of its mark is not a substantially exact representation of the mark as used by applicant in connection with its services. In the drawing, the mark IF BY LAND and IF BY SEA appears as one phrase. However, in the specimen, the two portions of applicant's mark (IF BY LAND and IF BY SEA) are depicted quite far apart from one another. The IF BY LAND portion of applicant's mark appears to the far left of applicant's specimen and is very close to the top of applicant's specimen. The IF BY SEA portion of applicant's mark appears to the far right of applicant's specimen and is very close to the bottom of applicant's specimen. Moreover, the two portions of applicant's mark are separated by the picture of a large hiking boot.

In arguing that the mark as it appears in the drawing is a substantially exact representation of the mark as it appears in the specimen, applicant makes essentially two arguments. First, while acknowledging that "the two

phrases as used in the specimen are physically separated," applicant argues that the two phrases share "many other characteristics" such as typeface, size and capitalization. (Applicant's brief page 7). We do not dispute applicant's contention. Rather, we are simply of the view that the vast physical separation of the two parts to applicant's mark simply outweighs the fact that the two parts of the mark are depicted in the same typeface, size and capitalization.

Second, applicant argues that "the phrases 'if by land' and 'if by sea' have a strong 'connotative connection' with one another --- [because] as will be appreciated by anyone acquainted with American history or folklore, the phrases 'if by land' and 'if by sea' taken together comprise a well-known reference to the celebrated poem 'Paul Revere's Ride,' written by Henry Wadsworth Longfellow." (Applicant's brief page 5). To begin with, as the very reference works made of record by applicant demonstrate, the full line in the poem is as follows: "One, if by land, and two, if by sea." Thus technically, applicant's mark IF BY LAND IF BY SEA does not comprise a well-known reference to the Longfellow poem.

However, even if it did, we again are of the view that the vast physical separation of the two parts to

applicant's mark (IF BY LAND and IF BY SEA) in the specimen is such that consumers would simply not view these two vastly separated phrases as a single mark as depicted in the drawing (i.e. IF BY LAND IF BY SEA).

Decision: The refusal to register is affirmed.

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